IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2496 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SABHAIBEN BHIKHABHAI BRAHMIN & 3 - Appellant(s)
Versus
RAMESHBHAI LAKHUBHAI ASHWAR & 2 - Defendant(s)

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Appearance :
MR RC KAKKAD for Appellant(s) : 1 - 4.
NOTICE SERVED for Defendant(s) : 1 - 2.
MR NAGESH C SOOD for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. This appeal arises out of a judgement and award dated 8th June, 2000 passed by the Motor Accident Claims Tribunal (Aux.II), Kachchh at Bhuj in Motor Accident Claim Petition No.480/1992.

2. The appellants are the original claimants who had filed the said claim petition seeking compensation of Rs. 2,00,000/- for death of one Bhanabhai Bhikabhai who died in a vehicular accident on 15th September, 1992.

3. It appears that when said Bhanabhai Bhikabhai was travelling in a truck on 15th September, 1992, the truck being driven by the opponent no.1 herein met with an accident. The deceased received bodily injuries and succumbed to injuries. For death of said Bhanabhai Bhikabhai, his aged widowed mother and three unmarried sisters filed the above-mentioned claim petition seeking a compensation of Rs.2,00,000/- from the driver, owner and insurance company of the truck. The Claims Tribunal after assessing the evidence on record came to the conclusion that the accident occurred on account of rash driving of the truck by the truck driver.

4. With respect to the quantum of compensation, it may be noted that before the Tribunal, the claimants led evidence to point out that the

deceased was employed as a Cleaner in a truck. The case of the claimants was that he was earning monthly income of Rs.1500/- per month. In addition thereto, he was also receiving Rs.600/- towards daily allowance. Thus, it was the claim of the claimants that the deceased was earning Rs. 2100/- per month. The Tribunal however, discarded the evidence of the claimants regarding the income of the deceased observing that there is no iota of evidence to establish that the deceased was earning Rs.2100/- per month. The Tribunal however, came to the conclusion that the deceased being a young person aged 21 years and being employed as a Cleaner, would be earning Rs.600/- per month as salary. Daily allowance was discarded from consideration by the Tribunal on the ground that the same must have been spent by the deceased for his personal expenditure. Having thus discarded the element of daily allowance, the Tribunal further slashed the income of the deceased by 1/3rd for his personal expenditure and worked out dependency benefits of the family at Rs. 400/- per month i.e. Rs. 4800/- per annum. The Tribunal adopted a multiplier of 17 considering the age of the deceased being 21 years on the date of accident. The Tribunal thus awarded a sum of Rs. 81,600/- (Rs.400x12x17) towards the loss of dependency benefits. To the said amount, the Tribunal added a further sum of Rs. 5,000/- towards funeral and transportation

charges. Eventually, the Tribunal granted a sum of Rs. 88,600/- to the claimants in the impugned award.

5. It may be noted that the insurance company i.e. opponent no.3 herein has not challenged the award. In that view of the matter, it is not necessary to discuss the question of negligence of the truck driver in causing the accident.

6. With respect to computation of compensation, we find that the Tribunal has erred in assessing the compensation. The Tribunal believed the version of the claimants that the deceased was employed as a Cleaner. In fact, it was in capacity of Cleaner that the deceased was travelling in the truck on the date of accident. That being so, the Tribunal erred in completely disregarding the evidence led by the claimants to suggest that the deceased was earning Rs.1500/- per month by way of salary. Even if there was no documentary evidence on record, the Tribunal having accepted the version of the claimants that the deceased was employed as a Cleaner, the Tribunal was required to assess monthly income of the deceased on the available material on record taking into account the nature of employment. In that view of the matter, the Tribunal adopting a sum of Rs.600/- as monthly salary of the deceased, was not justified. We find that the Tribunal further

committed an error in disregarding the daily allowance as well as reducing the monthly salary of the deceased by 1/3rd of his personal expenditure. In all, the award of the Tribunal is grossly inadequate.

7. We find that the version of the claimants that deceased was earning a sum of Rs. 1500/- per month by way of salary is eminently acceptable. Thus even taking a conservative estimate and reducing the said income of the deceased by 1/3rd for his personal expenditure, dependency benefits of the family can be worked out at Rs.1000/- per month i.e. Rs.12,000/- per annum. It may be noted that the claimants included aged widowed mother of the deceased who was about 45 years on the date of claim petition. Besides the widowed mother, claimants also included unmarried sisters of the deceased. It is also significant to note that the deceased was the only male member of the family. In that view of the matter, it is most reasonable to accept that the deceased would have to support not only his mother but his sisters as well for a reasonable period of time at-least till their marriage and for other social responsibilities even after their marriage. Considering all these aspects of the matter and considering the age of the deceased being 21 years and age of his mother being 45 years and other relevant circumstances mentioned here-in-above, we find that a suitable

multiplier of 15 can be adopted. In that view of the matter, the dependency benefits of the family would be worked out at Rs.1,80,000/-(i.e. Rs.12,000x15). To the said sum, we may add amount of Rs. 20,000/- under conventional head of loss of expectancy of life and Rs. 5,000/- for funeral expenses.

8. In the result, appellants shall receive a total sum of Rs.2,05,000/- by way of compensation. The award of the Claims Tribunal is modified accordingly. The appellant shall pay deficit Court fee accordingly.

9. It is clarified that the additional compensation awarded by us under this judgement shall be received by the claimants with proportionate costs and interest at the rate of 9% from the date of claim petition till actual realisation.

10. With these modifications and directions, the appeal is allowed and disposed of accordingly.

11. Enhanced amount as per this judgement will be deposited by opponent no.3 insurance company before the Claims Tribunal latest by 28th February, 2007.

12. Upon deposit, the Claims Tribunal shall invest 85% thereof in a nationalised bank near the residence of the claimants for a period of five

years with usual conditions about prohibition against premature encashment of/encumbrance over the deposits, permission to the claimants to withdraw interest periodically accruing on the fixed deposits and a direction to the bank not to permit the bank accounts of the claimants to be operated by any power of attorney holder other than a close relative of the claimants.

Remaining amount shall be disbursed in favour of the claimant no.1 through Account Payee Cheques.

(M.S.Shah,J.)

(Akil Kureshi,J.)

(raghu)